REMARKS

The final Office Action of January 2, 2008 has been carefully reviewed and these remarks are responsive thereto.

SUMMARY OF INTERVIEW

Applicant greatly appreciates the assistance of the Examiner in conducting an interview on March 28, 2008, during which the Klassen and Barton references were discussed. During the interview, Applicant among other things discussed the usage of "time slots" in the claims as compared to the cited prior art.

Further, during a telephone interview on April 18, 2008, Supervisory Patent Examiner Aung Moe suggested filing this paper as a way of expediting prosecution of the application.

Rejections Under 35 U.S.C. § 103

As discussed during the March 28 interview, neither Klassen nor Barton evaluates which of a plurality of different time slots correspond to favorable network traffic conditions as recited in independent claims 1, 19, and 31, nor do they determine which of a plurality of time slots is associated with a reduced level of packet contention as recited in independent claim 15, nor do they "identify one or more time slots that correspond to a low level of contention conditions" as recited in independent claim 37. The usage of "time slot" as understood by one of ordinary skill in the art (as per Newton's Telecom Dictionary, a brief moment in time committed to a particular type of data such as voice, data, or video) as recited in the claims is simply not present in Klassen or Barton. Independent claim 37 even provides a very specific definition of "time slot" ("time slots corresponding to candidate times during which packets may be transmitted between network endpoints on the network") which cannot be found in either reference. Accordingly, this claimed feature is missing from the references even if combined as proposed.

Second, as discussed during the March 28 interview, neither Klassen nor Barton discloses transmitting data packets using the favorably determined time slots. Barton uses a reserved allocation scheme, not empirically determined slots. Klassen also does not disclose transmitting data packets using favorably determined time slots. See independent claim 1 ("transmitting data packets . . . using one or more favorable time slots evaluated in step (2)"); independent claim 15 ("synchronously transmitting a plurality of data packets . . . during one or more time slots empirically determined to be associated with the reduced level of packet contention in step (2)"); independent claim 19 ("transmitting data packets . . . using one or more favorable time slots

evaluated in step (2)"); independent claim 31 ("synchronously transmitting data packets . . . using one or more favorable time slots evaluated in step (2)"); independent claim 37 ("synchronously transmitting . . . during the one or more of the time slots identified in step (4) that correspond to the low level of contention conditions").

Third, as discussed during the interview, there would be no reason to combine Klassen with Barton, because in Barton slots are reserved according to an allocation scheme. Transmitting the test packets of Klassen would disrupt the allocated slots by overwriting data being transmitted in the allocated slots.

In short, Klassen merely discloses a system for analyzing system performance and provides no scheduling of packets. Barton reserves bandwidth on a network for packets, and does not perform any testing of time slots. (Barton's reference to "probe" packets in paragraph 86 merely refers to estimating the bandwidth between two endpoints before allocating any time slots).

Applicant also respectfully refers to the arguments previously made in the Response to Final Office Action filed on February 14, 2008.

Conclusion

Based on the foregoing, Applicant respectfully submits that the application is in condition for allowance and requests that the rejections be reconsidered.

Respectfully submitted,

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